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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
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9 MICHAEL EBERLE, et al.,

10 Plaintiff,

11 vs.

12 JEFF SMITH, et al.,

Defendant.

CASE NO. 07cv120-W (WMc)

ORDER

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14 On September 25, 2007, a telephonic motion hearing was held in the above captioned
15 case. Participating were Teresa Polk, Esq.(counsel for plaintiff) and Andrea Kimball, Esq.
16 (counsel for defendant). After considering the letter briefs submitted, the Court issues the
17 following Order:

18 1. Plaintiff is not entitled to the discovery documents inadvertently disclosed by defendant
19 (Documents D00353 - D00385). The Court finds the documents are privileged and not subject to
20 disclosure. See *U.S. ex rel Bagley v. TRW, Inc.*, 204 F.R.D. 170 (C.D., Cal. 2001).

21 2. Counsel for defendant shall retrieve the documents from the Court on or before
22 September 27, 2007.

23 IT IS SO ORDERED.

24 DATED: September 27, 2007

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26 Hon. William McCurine, Jr.
27 U.S. Magistrate Judge
28 United States District Court

cc: Honorable Thomas Whelan

1 U.S. District Judge
2 All Counsel and Parties of Record
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